

Notice of Allowability

Application No.

09/334,256

Applicant(s)

RICHARDSON ET AL.

Examiner

James H. Zurita

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE of 12 September 2006.
2. ☒ The allowed claim(s) is/are 1-4 and 7-23.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

Prosecution History

On 16 June 1999, applicant filed the instant application.

On 7 September 2000, the Office rejected claims 1-10.

On 9 August 2001, applicant cancelled claims 5-6 and added claims 11-23.

On 22 October 2001, the Office issued a final rejection of claims 1-4 and 7-23.

On 21 December 2001, applicant filed a notice of appeal.

On 22 January 2002, applicant filed an appeal brief; it was returned on 26 March 2002 as defective.

On 9 April 2002, applicant filed a second appeal brief.

On 17 June 2002, the Examiner filed an answer to applicant's brief.

On 19 August 2002, applicant filed a reply brief.

On 17 September 2002, the Office mailed a letter vacating Examiner's Answer.

On 21 October 2002, applicant filed an appeal brief.

On 14 January 2003, the Examiner mailed a response to the brief.

On 14 March 2003, applicant filed another reply brief.

On 7 April 2003, the Examiner filed an answer to applicant's brief.

On 29 September 2004, the Board reversed the Examiner.

On 25 January 2005, the Office mailed a notice of allowance.

On 12 September 2006, applicant filed a Request for Continued Examination, a Petition to Withdraw from Issue and an Information Disclosure Statement.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114.

Applicant's submission filed on 12 September 2006 has been entered.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 12 September 2006 has been considered by the examiner.

Reasons for Allowance

Claims 1-4 and 7-23 are allowed, of which claims 1, 9, 10, 17, 22 and 23 are independent claims.

The following is an examiner's statement of reasons for allowance for independent claims 1, 9, 10, 17, 22 and 23.

Applicant's remarks in his Appeal Brief under 37 CFR 1.192, filed on 23 October 2002 and Reply Brief of 19 March 2003 are found by the Board of Patent Appeals and Interferences to be compelling and commensurate with both the original disclosure and the claims as amended. Appeal 2004-0812.

Claims 1, 9, 10, 17, 22 and 23.

An updated search was carried out on 25 September 2006.

The prior art of record is not found to teach or suggest modifying the reference to disclose functionality necessary to calculate various churns through performance reporting mechanisms provided by the references. Similarly, the prior art of record is found lacking with regard to tasking horizons and calculation of churn.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statements for Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James H. Zurita whose telephone number is 571-272-6766. The examiner can normally be reached on 8a-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Zurita
Primary Examiner
Art Unit 3625
4 December 2006

James Zurita
Primary Examiner